

## COLLATERAL POOL

### DEPOSITORY PLEDGE AND CONTINGENT LIABILITY AGREEMENT

This Agreement made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between the Treasurer of the State of Tennessee, hereinafter referred to as the “Treasurer” and \_\_\_\_\_, hereinafter referred to as the “Qualified Public Depository”, having its principal place of business at \_\_\_\_\_, is for the provision of banking services, as further defined below.

#### WITNESSETH:

WHEREAS, Tennessee state law requires every Tennessee bank receiving public deposits, as defined in Tennessee Code Annotated, Section 9-4-502(11), from the state of Tennessee, or any of its agencies, or any Tennessee county, Tennessee incorporated municipality and their political subdivisions, or any utility district organized under the laws of Tennessee or any utility district organized under the laws of Tennessee or any interstate compact to which the state of Tennessee is a party to secure such deposits by depositing with such public depositors certain types of collateral in various amounts;

WHEREAS, the Collateral Pool for Public Deposits Act of 1990, codified as Tennessee Code Annotated, Sections 9-4-501 through 9-4-523 (the Act) was passed to provide an alternative method for securing such public deposits;

WHEREAS, under the Act and the rules promulgated thereunder, a Tennessee bank may apply for permission to secure all of its public deposits through the Collateral Pool by depositing an amount of collateral, determined pursuant to the Act and its rules, in the Collateral Pool;

WHEREAS, the Qualified Public Depository, desiring to secure its public deposits through the Collateral Pool, has applied to and has been accepted into the Pool; and

WHEREAS, the Act requires any bank granted permission to participate in the Pool to execute a depository pledge agreement and a contingent liability agreement with the Treasurer which sets forth procedures for the pledge and deposit of collateral, and for the payment of losses caused by default or insolvency of Pool participants.

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, the parties have agreed and do hereby enter into this Agreement according to the provisions set out herein:

1. Business Day. The term “Business Day” as used herein shall mean a day on which the Federal Reserve Bank shall be open for the transaction of public business.
2. Notices.
  - a. When any written notice, request, demand or other advice is required or may be given hereunder, it shall be deemed sufficient if the party giving such notice, request, demand,

or other advice delivers the same to the other party by U.S. mail, postage prepaid, or by other superior mailing, or by hand delivery. Notices, requests, demands or other advice may also be given or made by telefax provided the transmission is verified by the party giving such notice, request, demand or other advice by calling the party to whom such notice is being given at the applicable telephone number listed in Section 2.a(1) below.

- (1) All notices, requests, demands or other advice delivered by mail or by hand shall be deemed to have been given when received by any party hereto at the following addresses:

Qualified Public Depository: Such office or mailing address as stated on the Notification of Address Form attached hereto.

Treasurer:

Office Address

Cash Management  
ATTN: Collateral Pool  
500 Deaderick Street  
11th Floor  
Andrew Jackson State Office Bldg.  
Nashville, TN 37219  
Telephone: (615) 532-1168

Mailing Address

State Treasury Department  
Cash Management Division  
P.O. Box 198785  
Nashville, TN 37219-8785

or to such other addresses of which any party hereto shall have notified the other party hereto in writing.

- (2) All notices, requests, demands or other advice transmitted by telefax shall be deemed to have been given when received by any party hereto via the following telefax numbers:

Qualified Public Depository: Such telefax number as stated on the Notification of Address Form attached hereto.

Treasurer: Cash Management

ATTN: Collateral

TELEFAX: 615-741-0755

or to such other telefax numbers of which any party hereto shall have notified the other party hereto in writing. For purposes of Paragraph 2.a(2) hereof, the phrase

“when received” shall mean when received mechanically by the telefax machine at the receiving location.

- b. Concurrent with the execution of this Agreement, each party hereto shall provide the other party hereto with a list identifying the individuals from whom the other party is authorized to accept any notices, requests, demands, or other advice which may be given hereunder by the party providing such list. Said lists shall be valid until revoked or amended by further written notice. The parties hereto shall only be entitled to rely on notices, requests, demands, or other advice given by such individuals.
- 3. Accounts.
  - a. The Qualified Public Depository agrees to establish and maintain separate accounts designated by name for each public depositor which deposits public funds with the Qualified Public Depository and to otherwise comply with each individual depository contract governing the individual accounts of each public depositor.
  - b. Prior to securing its public deposits through the Collateral Pool, the Qualified Public Depository shall notify its public depositors that all their public deposits will be secured through the Pool. The Qualified Public Depository agrees that such notification shall further be made whenever a new account is established by a public depositor with the Qualified Public Depository. The Qualified Public Depository shall notify its public depositors of any change in the manner collateral is held. Notice to public depositors hereunder shall constitute the mailing of the appropriate information to the individual indicated on the account authorization. The Qualified Public Depository shall carry in its accounting records a general ledger or other appropriate account of all public deposits to be secured through the Pool and the total value of eligible collateral pledged to secure such deposits.
- 4. Trustee Custodians.
  - a. Prior to securing its public deposits through the Collateral Pool, the Qualified Public Depository shall select, on a form prescribed on the Treasurer, one (1) or more financial institutions to serve as trustee custodians for the deposit of eligible collateral pledged to the Treasurer by the Qualified Public Depository. In making the selection, the Qualified Public Depository shall strive to select financial institutions from the Treasurer’s approved list of trustee custodians. If the Qualified Public Depository determines that the institutions on the approved list are not suitable for the Depository, then the Qualified Public Depository may decline to select such and shall submit an alternative recommendation to the Treasurer together with two (2) copies of the State’s Trustee Custodian Agreement for Public Funds executed by the recommended institutions. Designation of a trustee custodian shall be made in accordance with the provisions of Tennessee Code Annotated, Section 9-4-108. The Treasurer shall notify the Qualified Public Depository in writing of acceptance

- or rejection of the recommendation. If the recommendation is unacceptable, the Qualified Public Depository shall submit an additional recommendation to the Treasurer within five (5) Business Days after notification from the Treasurer. This process shall continue until an institution is designated as a trustee custodian. Any financial institution recommended by the Qualified Public Depository must be accepted by the Treasurer prior to the deposit of any eligible collateral with such institution.
- b. Upon designation of a trustee custodian to hold eligible collateral pledged to the Treasurer in accordance with this Agreement, the Qualified Public Depository shall deliver to such trustee custodian(s) all required collateral from time to time pledged by the Qualified Public Depository pursuant to this Agreement in such form as will empower the Treasurer to take custody of such collateral and to negotiate them at any time to the extent necessary to effectuate the purposes of the Act and this Agreement. Each registered security pledged pursuant to this Agreement shall be accompanied with an executed bond power attached. The Qualified Public Depository shall identify such collateral on its books and records at all times as being pledged to the Treasurer.
  - c. In the event a trustee custodian holding eligible collateral pursuant to this Agreement is or becomes related to the Qualified Public Depository through shared ownership or control, such eligible collateral shall be held in a restricted account at a Federal Reserve Bank or branch thereof as pledged to the Treasurer.
  - d. Neither the state of Tennessee, the Treasurer, nor the Pool shall be liable to the Qualified Public Depository for any loss arising from any breach of trust or for any cause whatsoever while the collateral is in the possession or custody of a trustee custodian.
  - e. The Treasurer may terminate a financial institution's designation as a trustee custodian at any time. In the event of such termination, the Treasurer shall notify the Qualified Public Depository in writing. Within five (5) Business Days of receipt of such notification, the Qualified Public Depository shall select a new trustee custodian in the manner prescribed in Section 4.a above. Provided, however, if the Qualified Public Depository fails to select an acceptable financial institution within fifteen (15) calendar days after a request therefor from the Treasurer, the Treasurer shall designate a financial institution of his own choosing in accordance with Tennessee Code Annotated, Section 9-4-108. Upon termination of a financial institution's designation as a trustee custodian, all eligible collateral held by such institution under this Agreement shall be transferred by such institution to the Treasurer or to a financial institution designated as a trustee custodian pursuant to this Paragraph. Any such transfer shall be made in accordance with Treasurer's instructions.

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5. Collateral.

- a. Required Collateral. The Qualified Public Depository shall secure all public deposits held by the Qualified Public Depository by pledging to the Treasurer eligible collateral, as defined in Tennessee Code Annotated, Section 9-4-502(12), in an amount equal to or in excess of the required collateral as defined in Tennessee Code Annotated, Section 9-4-502(19). Any security proposed by the Qualified Public Depository to be pledged as collateral pursuant to this Agreement must be approved by the Treasurer in accordance with Section 5.b. below prior to its deposit with a trustee custodian.

The Treasurer will only accept securities clearly permitted above as collateral. Further, the Treasurer may, in good faith, decline to accept securities as collateral when circumstances require in order to ensure the pledging of sufficient marketable collateral to meet the purposes of this Agreement and the Act. The Qualified Public Depository shall furnish to the Treasurer any supporting documents of newly formed securities as may be requested by the Treasurer.

- b. Pledging Procedures. The Qualified Public Depository shall pledge all eligible collateral in the following manner:
- (1) Whenever the Qualified Public Depository is required by the terms hereof to pledge eligible collateral to secure public deposits, the Qualified Public Depository shall call an individual identified on the list furnished to the Qualified Public Depository by the Treasurer in Section 2.b. above to obtain approval of the security proposed by the Qualified Public Depository to be pledged as collateral.
  - (2) The Treasurer shall then obtain the pledge of the collateral by transmitting to the Qualified Public Depository by telefax a Pledge Agreement in the form attached hereto. Upon receipt of the Agreement, the Qualified Public Depository shall pledge the eligible collateral to the Treasurer by having an authorized officer of the Qualified Public Depository execute the Agreement and by retransmitting the same to the Treasurer by telefax.
  - (3) The Qualified Public Depository shall then deliver the eligible collateral to the trustee custodian by delivering physical certificates duly endorsed and in good form for transfer, or, in the case of book entry securities, instructing the trustee custodian to make the necessary book entries on the custodian's books or causing the appropriate Federal Reserve Bank to make such entry on its books and identifying the eligible collateral as being pledged to the Treasurer.
  - (4) This Agreement shall be approved by the Board of Directors of the Qualified Public Depository, which approval shall be reflected in the minutes of said board and an

original executed copy of this Agreement shall be inserted in the official records of the Qualified Public Depository.

- (5) Said action by the Board of Directors shall also include authority for the appropriate officer of the Qualified Public Depository to approve, on behalf of the Board of Directors, Pledge Agreements subsequently executed hereunder.
  - (6) A fully-executed copy of each Pledge Agreement, upon being executed by the Qualified Public Depository and the Treasurer or his designee, shall be attached as an exhibit to the original executed copy of this Agreement in the official records of the Qualified Public Depository. Said documents shall continuously, from the time of their execution, be kept as official records of the Qualified Public Depository.
- c. Market Value. “Market Value” shall mean, with respect to any security, as of any date of determination thereof, (1) the closing price of such security on the New York Stock Exchange (NYSE) on the trading day next preceding such date of determination, or (2) if such security is not listed on the NYSE, the closing price of such security on any national securities exchange on which such security is listed on the trading day next preceding such date of determination, or (3) if such security is not listed on any national securities exchange, the price of such security as quoted by a recognized pricing service (including quotations published in The Wall Street Journal) at or as nearly as practicable at the close of business on the last trading day during which such security was traded next preceding such date of determination, or (4) with respect to a marketable United States government obligation, the price of such security as quoted by a recognized pricing service (including quotations published in The Wall Street Journal) or the dealer bid price quoted by a recognized dealer in such security at or as nearly as practicable at the close of business on the last business day preceding such date of determination; provided, that the market value of any security held as collateral as to which the issuer of such security is in default or as to which any third party has asserted an interest shall be zero for purposes hereof. Provided, further, the market value of any asset-backed security pledged as eligible collateral hereunder shall be reduced to reflect distributions of principal made on account of such security. Notwithstanding the foregoing, the Treasurer may, in good faith, reduce the reported market value of a security as circumstances may require to ensure the pledging of sufficient marketable collateral to meet the purposes of this Agreement and the Act.
- d. Collateral Pledging Level.
- (1) Concurrent with the execution of this Agreement, the Treasurer shall notify the Qualified Public Depository in writing of the initial collateral pledging level to be maintained by the Qualified Public Depository. The initial collateral pledging level of the Qualified Public Depository shall be determined according to the schedule



set forth in Rule 1700-4-1-.04(1) of the Official Compilation of the Rules and Regulations of the State of Tennessee.

- (2) The Treasurer may, at his discretion, recalculate quarterly or less frequently the collateral pledging level of the Qualified Public Depository pursuant to the foregoing schedule.
- e. Minimum Pledged Collateral. Notwithstanding any other provision of this Agreement to the contrary, the Qualified Public Depository shall maintain a minimum of pledged eligible collateral whose market value is not less than one hundred thousand dollars (\$100,000).
  - f. Limitations.
    - (1) Excess of Capital. For any deposits that the Qualified Public Depository holds in excess of its capital, surplus, and undivided profits, the Qualified Public Depository shall pledge eligible collateral at a higher pledge level, upon receipt of written notice thereof from the Treasurer.
    - (2) Ten Percent (10%) of Pool. If the Qualified Public Depository holds public deposits which exceed ten percent (10%) of the Collateral Pool, the Qualified Public Depository shall pledge eligible collateral against such deposits at a higher collateral pledge level upon receipt of written notice thereof from the Treasurer.
  - g. Temporary Increases in Deposits. In the event the Qualified Public Depository accepts any public deposit that causes its public deposits to exceed the greater of its average daily balance, or average monthly balance by twenty-five percent (25%), the Qualified Public Depository shall pledge additional eligible collateral with the Treasurer within two (2) Business Days of the deposit. The additional eligible collateral shall be equal to the difference between the actual public deposits and the greater of the average daily balance or average monthly balance times the applicable collateral pledge level, including any limitations thereto as set forth in Subsection f of this Section. The additional eligible collateral shall not be required if deposit(s) causing the increase are withdrawn within the two (2) Business Days and prior to pledging of the additional collateral. Additional pledged collateral shall be included in required collateral and held by the Treasurer until the next regular monthly report is filed.
  - h. Mark to Market. In the event the market value of the eligible collateral shall be less than the required value as of the close of any Business Day, the Qualified Public Depository shall notify the Treasurer in telephonic form as provided in Section 2.b hereof, and shall pledge or cause to be pledged to the Treasurer additional eligible collateral to the end that the market value of such collateral shall equal at least the required collateral.

6. Substitutions. The Qualified Public Depository may, with approval of the Treasurer, substitute eligible collateral for collateral previously pledged to the Treasurer provided the collateral meets at all times the provisions set out herein governing collateral. Substitute collateral will be transferred by the trustee custodian from the Treasurer to the Qualified Public Depository upon receipt of the required collateral for which substitution is being made, all in accordance with instructions from the Treasurer, including the Pledging Procedures set forth in Section 5.b above.
7. Releases. In the event the market value of the eligible collateral shall be more than the required value as of the close of any Business Day, the Qualified Public Depository may notify the Treasurer, and upon confirmation thereof, the Treasurer shall cause the trustee custodian to release a portion of the eligible collateral to the Qualified Public Depository to the end that the market value of the eligible collateral shall equal the required value by close of business each Business Day.
8. Distributions. The Qualified Public Depository shall be entitled to all interest and other distributions or other income on the collateral, provided there has been no default as defined in Section 11.b. below.
9. Participation Fee.
  - a. Calculation of Fees. The Treasurer shall annually determine the estimated amount required to cover the expenses of operating the Collateral Pool for the year next following. On the basis of such determination, the Qualified Public Depository shall bear a percentage of such operating expense in accordance with Rule 1700-4-1-.09(2) of the Official Compilation of the Rules and Regulations of the State of Tennessee.
  - b. Payment of Fee. The Qualified Public Depository shall pay any fee assessed by the Treasurer pursuant to this Section within thirty (30) calendar days of the date of notice from the Treasurer.
10. Reporting.
  - a. Monthly Reports.
    - (1) Report Contents. The Qualified Public Depository shall submit to the Treasurer, on a form prescribed by the Treasurer, a monthly report. The report shall include, but shall not be limited to, the following: average daily balance of all demand deposits; the average daily balance of all time deposits and the average daily balance of all savings deposits held by it during the month; the average monthly balance of all public deposits held for the previous twelve (12) calendar months; and such other information requested on the form.
    - (2) When Due. The monthly report shall be delivered to the Treasurer not later than



the fifteenth (15th) day after the end of each calendar month, or when requested by the Treasurer, and shall contain the applicable information for the preceding calendar month. The report shall be submitted under oath, and signed by the president or other duly authorized officer of the institution, and by the individual who prepared the report.

- (3) Supplemental Reports. At any time, the Treasurer may, in writing, request any information which would be included in the monthly report. The Qualified Public Depository shall provide the supplemental report to the Treasurer within five (5) Business Days of receipt of the request.
- (4) Amended Reports. At any time that the Qualified Public Depository determines that any information contained on a monthly report is inaccurate or incomplete, the Qualified Public Depository shall file an amended report with the Treasurer not later than ten (10) Business Days after the determination is made.

b. Annual Reports.

- (1) Annual Reports Generally. The Qualified Public Depository shall file an annual report with the Treasurer. The annual report shall be filed on a form furnished by the Treasurer and shall contain a statement of all public deposits held for the credit of all public depositors at the close of business on the last business day in the calendar year and such other information as requested on the form. The statement shall be prepared by a person qualified to conduct audits as defined in Rule 1700-4-1-.02(2)(f) of the Official Compilation of the Rules and Regulations of the State of Tennessee.
- (2) When Due. The annual report shall be filed not later than March 31 of each year and shall include the required information for the prior calendar year.
- (3) Amended Report. The Qualified Public Depository shall file with the Treasurer an amended annual report if it determines that any information included on the annual report is inaccurate or incomplete. The amended report shall be filed within fifteen (15) Business Days of the time the Qualified Public Depository determines that the prior report was inaccurate or incomplete.

c. Change of Name, Address, Charter of the Institution, or Ownership.

- (1) Report Contents. The Qualified Public Depository shall file with the Treasurer, on a form prescribed by the Treasurer, a report of any change of name, address, charter or ownership of the Qualified Public Depository.
- (2) When Due. The report shall be filed within three (3) Business Days of such change.

d. Confidential Information. Any information contained in a report required under this

Agreement which is confidential by any law of the United States or of the state of Tennessee, shall be considered confidential and not subject to dissemination to anyone other than the Treasurer and the Collateral Pool Board, as defined in Tennessee Code Annotated, Section 9-4-506, and the Tennessee Comptroller of the Treasury, or his designated representatives, for purposes of audit. The confidentiality of such information shall be maintained by the Tennessee Comptroller of the Treasury in the same manner as he maintains the confidentiality of his working papers which are not subject to Tennessee Code Annotated, Section 10-7-503. It shall be the responsibility of the Qualified Public Depository to inform the Treasurer of information that is confidential and the Treasurer does not have a duty to inquire into whether information is confidential. The Treasurer shall design report forms so that any information which is confidential may be placed by the Qualified Public Depository on separate sheets; only information which is confidential by Tennessee state or Federal law may be so designated.

11. Default of Qualified Public Depository.

- a. Upon default, the Qualified Public Depository, pursuant to Tennessee Code Annotated, Section 9-4-512, shall be responsible for any loss to the public depositors. Such loss shall be satisfied out of collateral pledged by the Qualified Public Depository to whatever extent possible. Collateral pledged in accordance with this Agreement may be sold on the Treasurer's behalf by the Treasurer or by the trustee custodian or any other person, including a federal agency holding such collateral. Excess proceeds, if any, realized from the sale of collateral will be returned to the Qualified Public Depository or its successor.
- b. "Default" may include, but is not limited to:
  - (1) The failure of the Qualified Public Depository to return any public deposit, including earned interest in accordance with the terms of the deposit contract;
  - (2) The failure of the Qualified Public Depository to pay any properly payable check, draft or warrant drawn by the public depositor;
  - (3) The failure of the Qualified Public Depository to honor any valid request for electronic transfer of funds;
  - (4) The failure of the Qualified Public Depository to account for any check, draft, warrant, order, deposit certificate or money entrusted to it;
  - (5) The issuance of any order of any court or the taking of any formal action by any supervisory authority, which has the effect of restraining the Qualified Public Depository from making payments of deposit liabilities;

- (6) The appointment of a conservator or receiver for the Qualified Public Depository;
- (7) Failure to provide the required collateral as provided in this Agreement; or
- (8) Any other action which the Treasurer determines to place public deposits in jeopardy.

12. Contingent Liability and Payment of Losses.

- a. Contingent Liability. In consideration of participating in the Collateral Pool, the Qualified Public Depository hereby guarantees public depositors against loss caused by the default or insolvency of any other qualified public depository participating in the Collateral Pool and hereby agrees to collectively share in any such loss according to the procedures set out below.
- b. Payment of Losses.
  - (1) The loss to public depositors shall be satisfied, in so far as possible, first through any applicable deposit insurance and then through the sale of securities pledged by the defaulting depository;
  - (2) If the loss to public depositors is not covered by such insurance or the proceeds of such sale, the Treasurer shall provide coverage of the remaining loss by assessment against the other qualified public depositories within the Collateral Pool. However, if the sale of securities cannot be accomplished within seven (7) Business Days, the Treasurer may proceed with the assessment to the Qualified Public Depository. Such assessment shall be determined by multiplying the total amount of the loss to all public depositors by a percentage which represents the average share of public deposits held by the Qualified Public Depository during the previous twelve (12) months divided by the average total public deposits held by all depositories in the Collateral Pool during the same twelve-month period, excluding the public deposits of the defaulting depository;
  - (3) The Qualified Public Depository shall pay its assessment to the Treasurer within seven (7) Business Days after it receives notice of the assessment. If the Qualified Public Depository fails to pay its assessment when due, the Treasurer shall satisfy the assessment by selling securities pledged by the Qualified Public Depository;
  - (4) If the qualified public depository in default or its receiver provides the funds to the Treasurer, the Treasurer shall distribute the funds, plus all accrued interest which has accumulated from the investment of the funds, if any, to the qualified public depositories which paid assessments on the same pro rata basis as the assessments were paid.

- c. Definition of Loss. For purposes of this Section, loss includes but is not limited to:
  - (1) The principal amount of the public deposit;
  - (2) All accrued interest through the date of default;
  - (3) Additional interest at the rate the public deposit was earning on the total of Subsections (1) and (2) above through the day of payment by a liquidator or other third party or through the date of sale of eligible collateral by the Treasurer or his agent; and
  - (4) Attorney's fees incurred in recovering public deposits.

13. Effect of Merger or Acquisition.

- a. In the event the Qualified Public Depository is merged into, acquired by, or consolidated with a bank that is not a qualified public depository, the resulting institution shall become a qualified public depository, and the contingent liability of the Qualified Public Depository shall be a liability of the resulting institution, provided the Qualified Public Depository is not in default. Within thirty (30) calendar days after the effective date of the merger, acquisition or consolidation, the resulting institution shall execute in its own name and deliver to the Treasurer a contingent liability agreement containing the language set forth in Section 12 hereof. If the resulting institution chooses not to remain a qualified public depository, it shall comply with the procedures for withdrawal from the Pool as provided in Section 14(a) and (c) of this Agreement.
- b. The Qualified Public Depository shall notify the Treasurer in writing of any acquisition or merger within (3) Business Days after the final approval of the acquisition or merger by its appropriate regulator.
- c. Collateral subject to this Agreement may not be released by the Treasurer or any trustee custodian until the assumed liability is evidenced by the deposit of collateral pursuant to a depository pledge agreement of the successor entity. The reporting and pledge of collateral requirements will remain in force until the Treasurer determines that the liability no longer exists. The surviving or new qualified public depository shall be responsible and liable for all of the liabilities and obligations of the Qualified Public Depository.

14. Withdrawal from Pool.

- a. Voluntary Withdrawal. The Qualified Public Depository may withdraw from participation in the Collateral Pool by giving written notice to the Treasurer and to the public depositors having public deposits at the Qualified Public Depository. Notice of withdrawal shall be mailed or delivered in sufficient time to be received by the Treasurer and by the public depositors at least one hundred eighty (180) calendar days before the effective date of withdrawal.

- b. Mandatory Withdrawal. The Qualified Public Depository shall be required to withdraw from the Collateral Pool as provided in Tennessee Code Annotated, Section 9-4-517. The Treasurer shall notify the Qualified Public Depository of the effective date of the withdrawal not less than thirty (30) calendar days prior to such effective date. Within ten (10) Business Days after receipt of such notification, the Qualified Public Depository shall notify in writing each public depositor having public deposits at the Qualified Public Depository of the effective date of the withdrawal.
- c. Withdrawal Generally.
- (1) The Qualified Public Depository shall be contingently liable for any loss to the Pool occurring prior to the effective date of withdrawal by the Qualified Public Depository.
  - (2) On the effective date of either a voluntary or mandatory withdrawal, the Treasurer shall determine whether a loss to the Pool may have occurred prior to the effective date of withdrawal by the Qualified Public Depository.
  - (3) If the Treasurer determines that a loss to the Pool has not occurred, the Treasurer shall transfer eligible collateral as jointly directed by the Qualified Public Depository and public depositors. The above transfer shall be completed within ten (10) Business Days after the effective date of withdrawal. Upon completion of the transfer, the Qualified Public Depository's contingent liability shall no longer be in effect.
  - (4) If the Treasurer determines that a loss to the Pool may have occurred prior to the Qualified Public Depository's effective date of withdrawal, the Qualified Public Depository shall maintain pledged collateral in an amount calculated as follows:
    - A. If the amount of loss has not been determined as of the effective date of withdrawal, the amount of pledged collateral to be maintained by the Qualified Public Depository shall equal the total amount of public deposits held by the defaulting depository, less any applicable Federal Deposit Insurance, multiplied by the percentage which represents the average share of public deposits held by the Qualified Public Depository during the previous twelve (12) months divided by the average total public deposits held by all depositories in the Collateral Pool during the same twelve-month period, excluding the public deposits of the defaulting depository.
    - B. If the amount of loss has been determined as of the effective date of withdrawal, the amount of pledged collateral to be maintained by the Qualified Public Depository shall be determined in accordance with Subsection 12.b. of this Agreement.

- (5) The Qualified Public Depository shall continue to file monthly, quarterly, and annual reports with the Treasurer during the period in which its contingent liability is in effect.
  - (6) The contingent liability, required collateral and reporting requirements of the Qualified Public Depository as set forth in this Section shall continue until the loss to public depositors has been satisfied. Once the loss to public depositors has been satisfied, the Treasurer shall transfer the remaining eligible collateral as jointly directed by the Qualified Public Depository and public depositors. The transfer shall be completed within ten (10) Business Days after the date on which the loss has been satisfied. Upon completion of the transfer, the Qualified Public Depository's contingent liability shall no longer be in effect.
15. Representations. The Qualified Public Depository represents and warrants to the Treasurer that (1) it has read and understands the Collateral Pool for Public Deposits Act of 1990, codified as Tennessee Code Annotated, Sections 9-4-501, et seq., and Chapter 1700-4-1 of the Official Compilation of the Rules and Regulations of the State of Tennessee which implement the Collateral Pool portion of said Act, (2) it is duly authorized to execute and deliver this Agreement, and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance, (3) the person signing this Agreement on its behalf is duly authorized to do so on its behalf, (4) it has obtained all authorizations of any governmental body required in connection with this Agreement and the transactions hereunder and such authorizations are in full force and effect and (5) the execution, delivery and performance of this Agreement will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected. The Qualified Public Depository further represents and warrants (1) that all eligible collateral pledged to the Treasurer shall be free from any lien or encumbrance, (2) that this Agreement has been approved by its Board of Directors and that the approval is reflected in the minutes of the Board, (3) that each transaction under this Agreement will fully comply with all the requirements of Section 5.b. above and Section 1823(e) of Title 12 of the United States Code, as amended, (4) that this Agreement and all confirmations and other writings relating to this Agreement and any transaction under the Agreement constitute and will constitute an official record of the Qualified Public Depository within the meaning of Section 1823(e) of Title 12 of the United States Code, as amended, and (5) that upon any transfer of collateral hereunder, the Qualified Public Depository will have good and clear title to the collateral transferred and that the collateral will be and will remain free and clear of any and all claims, liens or encumbrances, except the Treasurer's security interest hereunder, and that it will do all such acts and things as the Treasurer may reasonably request, from time to time, to ensure that the Treasurer's security interest in the collateral remains valid and perfected under State law and under the above cited Section 1823(e).



16. Liability of Treasurer. In the event collateral is held by the Treasurer in lieu of a trustee custodian, the Treasurer will be liable to the Qualified Public Depository exclusively as provided by Tennessee Code Annotated, Section 9-4-407 for any monetary loss on collateral arising from embezzlement and/or theft while such collateral is in the Treasurer's possession or under his control or dominion. However, the Treasurer will not be liable for any monetary loss to the Qualified Public Depository while the collateral is in the possession of any common carrier en route to or from the Qualified Public Depository or to and from the Treasurer, or for any loss arising while the collateral is in the possession or custody of a trustee custodian, or for any reason beyond the Treasurer's control.
17. Audits. Upon providing reasonable notice to the Qualified Public Depository, the Treasurer, the Tennessee Comptroller of the Treasury or their duly appointed representatives shall be entitled to visit the Qualified Public Depository's premises during normal banking hours to examine and conduct audits of all public deposits and records pertaining thereto, and to make reasonable requests for copies of such records.
18. Insurance. The Qualified Public Depository shall have such reasonable contracts of insurance covering the eligible collateral which it holds or shall hold for the Treasurer as are customarily made with respect to property of a similar nature by financial institutions.
19. Civil Rights. No person on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law shall be excluded from participation in, or be denied the benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of the Qualified Public Depository. The Qualified Public Depository shall, upon request of the Treasurer, show proof of such nondiscrimination, and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
20. Assignments. The Qualified Public Depository shall not assign this Agreement or enter into subcontracts for any work described herein without obtaining the prior written approval of the Treasurer.
21. Amendment. This Agreement may be modified only by written amendment executed by all parties hereto.
22. Controlling Document. Notwithstanding the provisions of any individual investment instrument governing any account of the Qualified Public Depository, the provisions of this Agreement shall control. Notwithstanding any provision of this Agreement, the Qualified Public Depository agrees to be bound by the obligations imposed on qualified public depositories by Tennessee statutes and regulations, as they may be amended from time to time throughout the term of this Agreement.

23. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee without giving effect to the conflict of law principles thereof. The parties hereto specifically acknowledge and agree that any rights that may be asserted against the Treasurer hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

24. Certification. This Agreement shall be accompanied by a resolution of the Qualified Public Depository's Board of Directors and a certified copy of the minutes of the meeting showing the Board's acceptance of the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties have by their duly authorized representatives set their signatures as of the date and year first above mentioned.

TREASURER OF THE STATE OF TENNESSEE

BY: \_\_\_\_\_

Dale Sims, State Treasurer

\_\_\_\_\_

Date

THE QUALIFIED PUBLIC DEPOSITORY

\_\_\_\_\_

(Typed or Printed Name of Financial Institution)

BY: \_\_\_\_\_

(Signature of Authorized Officer)

\_\_\_\_\_

Date

\_\_\_\_\_

(Typed or Printed Name of Officer)